

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35982

JACKSON COUNTY, MO.—ACQUISITION AND OPERATION EXEMPTION—UNION
PACIFIC RAILROAD COMPANY

Decided: March 22, 2019

On December 23, 2015, Jackson County, Mo. (the County), filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire from Union Pacific Railroad Company and operate approximately 17.7 miles of rail line between milepost 288.3 and milepost 270.6, in Jackson County. The Board denied a request for a stay by decision served February 4, 2016, and permitted the exemption to become effective immediately.

On October 22, 2018, certain landowners¹ jointly petitioned the Board to revoke the exemption. The County replied in opposition on November 13, 2018. On January 28, 2019, the landowners filed a notice of additional authority and a notice of supplemental information.² In a decision served on February 5, 2019, the Board instituted a proceeding and noted that evidence presented in the petition to revoke raises questions about whether recreational trail use on the right-of-way remains consistent with the County's acquisition and operation of a rail line under § 1150.31 and the County's common carrier obligation. The Board also established a procedural schedule providing for a supplemental response from the County, and replies from interested parties.

On February 11, 2019, the landowners and the County jointly asked that the Board hold the proceeding in abeyance and commence mediation pursuant to 49 C.F.R. part 1109. In a decision served on February 21, 2019, the Board granted that request.

¹ The landowners are: Deborah S. Groh; DJHS Enterprises, LLC; JHB & MEB Enterprises, LLC; David W. Wells; Dawn R. Wells; Current Properties Investments, LLC; and Nephrite Fund I, LLC. The landowners are plaintiffs in a lawsuit before the U.S. Court of Federal Claims, Groh v. United States, Case No. 17-1066L. By order issued in that docket on July 10, 2018, the court stayed the lawsuit so that the landowners could pursue administrative remedies before the Board.

² These filings were dated January 4, 2019, and January 10, 2019, respectively, but because of the partial shutdown of the Federal government at that time, they were considered filed on January 28, 2019. See Filings Submitted or Due to Be Submitted During the Partial Fed. Gov't Shutdown, EP 751 (STB served Jan. 28, 2019).

By letter dated March 18, 2019, the mediators informed the Board that mediation had been conducted but ended without a settlement. That letter also states that the parties agreed to request that, once the proceeding is removed from abeyance, the County's supplement be due by March 29, 2019, and replies from interested parties be due by April 18, 2019.

The County's supplemental response will be due by March 29, 2019. Replies from interested parties will be due by April 18, 2019.

It is ordered:

1. The proceeding is removed from abeyance.
2. A supplemental response from the County is due by March 29, 2019, and replies from interested parties are due by April 18, 2019.
3. This decision is effective on its service date.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.